

# PowerPoint

## Prior Authorization Training

Kansas Department of Administration  
Office of Business Process Improvement  
Procurement and Contracts

## ***Competition***

Government Procurement is based on  
Competitive Bidding Processes

- KSA 75-3739(a) states that "...purchases of and contracts for supplies, materials, equipment and contractual services ...shall be based on competitive bids..."
- Non-competitive transactions are the exception, not the rule.

## *Standards and Expectations*

- Communicate Early!!!
  - Program Folks...talk to Agency Procurement
  - Agency Procurement Folks...involve Central Procurement
- \* \* • Seek PRIOR Authorization *not* POST-PURCHASE approval  
*Delegated Authority could be revoked/reduced*
- \* \* • No signed contracts or purchase orders until AFTER authorization
- Don't Split Orders!!

## *Standards and Expectations*

- Exhaustive research documented in the PA Request
- Is there competition...
  - ...Between manufacturers
  - ...Within a particular brand from distributors
- \* • Submit PA Requests in a timely fashion!
- • Be prepared to use the competitive bid process
- Even in "emergency" situations, competition is possible

### \* *Prior Authorization Requests exceeding \$100,000*

Per KSA 75-3739(a)(7)

"...no (non-competitive) purchase...in excess of \$100,000 shall be entered into... unless the Director of Purchases first posts, an on-line notice...for...at least seven days"

**Plan Ahead!**

### \* \* *Consequences for Inappropriate Procurement Activities*

- \* • Reduction / Revocation of Local Delegated Procurement Authority
- Delayed receipt of Goods by agency
- Delayed Payments to Vendors
- Voided contracts
- Litigation

## *Research Expectations*

- Did you:
  - Conduct a "Google search"? Not enough by itself!
  - Look for Manufacturer distributors...
  - Check with peer programs in another states...
  - Check with Professional organizations...
  - Look for manufacturer competitors...

\* • Multiple quotes do not equal sole source.

## *Research Expectations*

- \* A letter from a vendor claiming to be the only provider must not be used as the sole documentation
  - *GeoSuites - ?!*
  - Confirm through independent means

## Research Expectations

- In your market analysis, did you
  - Check price competitiveness?
  - Check for other manufacturers? Distributors?
  - \* ▫ Analyze impact of changing from the incumbent?
  - \* ▫ Include this information in your PA request?
- Requests must be "quantity-friendly"
  - Buy one, or buy 36

## Repetitive Purchases

- Long-term price agreements
  - Eliminate repetitive PA requests
  - Eliminate Reporting requirements
- Example: Lab needs specific chemistry or reagents
  - Bid the equipment and chemistry/reagents together
  - Issue PO for Equipment
  - Long-term price agreement for chemistry/reagents
  - SMART / Procurement efficiencies

• Software - Maintenance - Upgrades etc...

Firefighting Mode

December 1, 2012

## **Denial of PA Requests** \* Crackdown

PA Requests will be denied if:

- \* • Incorrect or Out-of-Date Form
- \* • Limited or Inadequate Research
- \* • PA Type is not correct
- \* • PA-Type in SMART and PA form don't match

## **Questions so far....?**

- Next step is to talk about specific PA-Types
- Standards and expectations discussed earlier apply to many PA-Types
- Accurate information and improved documentation results in timely processing of PA requests.



## CCA - Consortium / Cooperative Purchasing Agreements

WSCA

KSA 75-3739(i) - The director of purchases may participate in, sponsor, conduct, or administer a cooperative purchasing agreement(s)...

- Cooperatives/Vendors may try to sell direct – NOT ALLOWED
- Central Procurement must be involved in Cooperative Procurements
- Participating Addendum identifies contract parties:
  - \* Contractor
  - \* Cooperative
  - \* User Agency
  - \* Lead Contracting Entity
  - \* Kansas Terms and Conditions
  - \* Establishing a SMART contract to facilitate payment

## CCA - Consortium / Cooperative Purchasing Agreements

### Legislative Post Audit review of cooperative procurements

#### Recommendation:

- Research must be conducted on cooperative purchases
  - Is the pricing competitive?
  - Is there an administrative fee? How much? To whom?
  - Are contract's terms and conditions acceptable? DA-146a
  - Should Central Procurement bid, rather than cooperative?

*CCA - Consortium / Cooperative Purchasing Agreements*

**One-Time Procurements** - use the PA form

**Repetitive Purchases**

- Communicate with Central Procurement
- Central Procurement processes Participating Addendum
- Central Procurement creates SMART Contract
- Agency ordering in SMART is easier – No PAs needed

**COM - Compatible with Existing Equipment**  
*IT*

*KSA 75-3739(a)(5) when compatibility with existing contractual services, supplies, materials or equipment is the overriding consideration*

*licensing, maintenance, software, etc...*

- Expectations and Standards
  - Discuss long-term supplies or maintenance needs up front...
  - Definite or indefinite quantity? *100... as needed*
  - Over what period of time?
  - Can the project be finished within the period of time discussed within the PA Request?

*Deliverables based contract*



## COM - Compatible with Existing Equipment

COM PA request must answer to the following question:

- ✗ • How were comparable products or services with minor deviations in size and operational characteristics from those set forth in the agency's specification considered when such deviations do not alter nor deter the agency from accomplishing its intended usage or function?

- From earlier research discussions...

- Market analysis completed?
- Requests be "quantity-friendly"

✗ How is the product that does not meet the Specifications able to not deter the Agency from Accomplishing its intended goal?

## COM - Compatible with Existing Equipment

**Example:** Agency has Taser-brand devices; needs compatible replacement cartridges

- Best Practice: Bid the devices and cartridges together
  - Long-term agreement
  - PO can be issued for the initial devices purchase
  - Central Procurement creates SMART Contract
  - Agency ordering in SMART is easier – No PAs needed

## CSD - Computer Software / Maintenance Available Only From the Developer

- **KITO approval for IT Projects exceeding \$250,000**
  - Lack of KITO approval may delay procurement
  - <http://oits.ks.gov/kito/>
- **Increased Emphasis on Long-Term Planning**
  - Long-term implications – licensing, supplies or maintenance?
  - Definite or indefinite quantity ?
  - Period of time?
  - Deliverables-based?
- **Software Contract(s)**  
*on-point, SHI*

## CSD - Types of Software

*describe better*

Identify software category-type on the PA

- **Packaged Software**
  - Example: Microsoft Windows products ... *Adobe etc...*
- **Specialty Software**
  - Example: Fax software - integrates to operating systems
- **Custom Off the Shelf (COTS) Software**
  - Example: Oracle / PeopleSoft Financials . *SMART, SHARP*
- **Custom Application**
  - Built-from-scratch

## CSD is NOT...

- Computer hardware
- A new software application

## DAR - Delegated Authority Request

*KSA 75-3739(e) ...the director of purchases may delegate authority to any state agency to make purchases of less than \$25,000 under certain prescribed conditions and procedures.*

- Everyday Local Delegated Authority (LDA) 5000.<sup>00</sup>  
KDOT \$25,000.<sup>00</sup>
- ✱ One-time increase in local delegated authority  
Did everything right...
- REPEATED TO EMPHASIZE ITS IMPORTANCE:
  - By statute, a DAR PA Request cannot exceed \$25,000
  - ✱ DAR should not be used as a SOLE SOURCE PA-type

Bid process

## ***DAR Requests - Expectations***

- Bid process that complies with KSA 75-3739
- Attach to PA request:
  - Copy of the bid document and specifications sent to potential bidders
  - List of bidders solicited
  - Bid schedule
  - How statutory posting requirements have been met
  - Copy of bid responses *posted where, when how long*

## ***DOP - Director of Purchases Approval***

*KSA 75-3739(a)(7) when, in the judgment of the director of purchases and the head of the acquiring state agency, not seeking competitive bids is in the best interest of the state.*

- **Not** typically used for a Sole Source transaction
- When "...not seeking competitive bids is in the best interest of the State of Kansas..."
- Engage Central Procurement with questions  
*probably already talked to purchasing*

## EMR - Emergency Procurement

*75-3739(a)(3) when, in the judgment of the director of purchases, an agency emergency requires immediate delivery of supplies, materials or equipment, or immediate performance of services*

- An **emergency** condition exists when there is a threat to public resources, health, welfare, or safety which may arise by reason of weather, epidemics, infrastructure failures or other circumstances.
- Immediate and serious need for supplies, goods and services, or services that cannot be met through normal procurement methods.

AC down 100+ several days  
Tornado

## EMR - Emergency Procurement

- Communicate early and often!
- Competition can be facilitated and still provide a timely response
  - Provide quotes with the PA Request
- Agencies may make emergency purchases up to their local delegated authority, within reason.
  - Audits of SMART data for abuses
  - Repetitive Purchases which total more than \$5,000 must be reported



## General Emergencies - Examples

### Scenario 1:

Leaky roof in rainy season must be repaired (NOT REPLACED) or agency records will be ruined

- After rain event, immediate forecast is for more rain; seek immediate short-term repair to stabilize
- After rain event, immediate forecast is for sun; seek multiple bids for short-term repair
- Once "emergency" situation is stabilized, seek bids on permanent repair or replacement

### Scenario 2:

A microburst storm blows out the windows of a state-owned building

- Agency must take immediate measures to protect the building and its contents
- Once "emergency" situation is stabilized, seek bids on permanent repair or replacement

## General Emergencies - Examples

**Scenario 3:** Agency CIO suddenly resigns. Agency needs short-term interim leadership.

- Check with Executive Branch CITO to see what resources are available
- Develop specific expectations / deliverables for any temporary placement
- Discuss contract or bidding options with Central Procurement representatives immediately
- Time is of the essence; long term "emergency" status will not be acceptable

## General Emergencies - Examples

### Scenario 4:

- In the middle of July, an unexpected failure of the HVAC system for a state building needs to be repaired.
  - Competition should be sought for the repair and any potential replacement of the equipment
  - Call local companies to check availability on short notice as well as costs for parts, materials and labor

## General Emergencies - Examples

- \* **Scenario 5:** In the middle of January, the air conditioner needs to be replaced
  - This is not an emergency
- \* **Scenario 6:** The printer ran out of toner
  - This is not an emergency

## \* Catastrophic Emergencies

- **IMPORTANT:** In the event of a catastrophic emergency, agency personnel may take whatever procurement action necessary to stabilize the situation;
  - Follow-up must include a discussion with Agency and Central Procurement officials to determine reporting and payment approval logistics.
- For agencies that might be first responders to a catastrophic emergency, it is important to *establish and manage contingency plans* that include Agency and Central Procurement teams to facilitate immediate responses and minimize the bureaucracy associated with Prior Authorizations, payments to vendors and Legislative reporting requirements.

snow/ice...

Tornadoes

widespread/longterm (Katrina)

FEMA rules

First Responder to situations



## GSR - Grants / Sub-Recipients

→ 75-3739(j) The director of purchases may delegate authority to any state agency to make purchases under certain prescribed conditions and procedures when the acquisition is funded, in whole or in part, from a grant...

- It's not the source of the funds that determines procurement path, it's the eventual destination / use
- Direct Benefit vs. Grant of Monies
- Account Code Driven Reviews and Audits

- many grants tell you how to spend the money

- what you buy determines the path

IF the Agency receives direct Benefit it is not a Grant

- Arts → local theater to produce plays - Grants

- Get/Receive a mailing list that is a service that is not a Grant

NO P.A. required

## IGP - Inter/Intra Governmental Procurements

75-3739(h) The director of purchases may authorize state agencies to contract for services and materials with other...agencies...with or without competitive bids.

- Deliverables-based specifications create higher accountability
  - Correct and timely completion of the work by the contractor
  - Agency review of delivered material / reports / content for accuracy and completeness
- \* Avoid time and materials contracts
- \* SMART HINT: When creating a requisition to another state agency, use correct SMART vendor number - Agency #
  - Between State Agency
  - KU CR - Intra Agency
  - School Districts
  - Countries
  - City of Topeka

## LRE - Lab or Research Equipment / Supplies

KSA 75-3739(a)(2) when, in the judgment of the director of purchases, chemicals and other material or equipment for use in laboratories or experimental studies by state agencies are best purchased without competition, or where rates are fixed by law or ordinance;

- Rationale focus on "controls" in laboratory research
  - "Controls" are factors from research that are not subject to the experiment.
  - Changing controls could affect the outcome of the research.
- Earlier comments about analysis and research apply here....

## OCP - Off-Contract Purchase Requests

*Policy - Contract Price: Contracts are awarded by Procurement and Contracts...However, if a state agency locates a vendor that can provide the identical item at a lower price, a waiver to "buy off state contract" may be granted by Procurement and Contracts.*

### When Considering an Off-Contract Purchase:

- Consider the impact and cost of issuing multiple orders and payments
- Consider the cost of time spent researching options in the marketplace
- \* Consider asking contractor to match the lower price to avoid PA Processing

**Policy Statement** - The established policy for off-contract purchases remains very specific:

- \* Item purchased must be identical (brand, model, etc.) to what's available on contract
- For items available from multiple sources in the open market, it's important to show that the agency has checked more than one source for the reduced price.

## OCP - Off-Contract Purchase Requests

### Policy Clarifications / Changes

- \* Applies to **Statewide - Mandatory Use Contracts** only
  - Agency contracts are **mandatory use**,
    - If the contract isn't competitive, it should be terminated and re-bid.
  - **SMART Processing:**
    - Under \$5,000, agency must still use the OCP PA-Type
    - Agency must maintain documentation for future audits
  - **Statewide - Optional Use Contracts** provide ability to place orders fast
    - A PA Request isn't required for purchases away from an optional use contract
    - LDA limitations apply to Optional Use Contracts



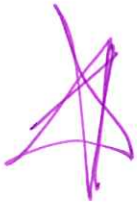
going away

## OEM - Original Equipment Manufacturer

- \* This PA-Type will be removed from SMART as an option effective December 1, 2012.
- \* Please use other PA-Types, including
  - COM
  - OKP

## \* OKP - Only Known Provider

- KSA 75-3739(a)(1) Competition required, except "...when, in the judgment of the director of purchases, no competition exists..."
- Competition is a statutory requirement
- Non-competitive purchases must be reported through PA Process
- Previously mentioned Research Standards and Expectations apply here...
- Because of claims of OKP...research expectations are heightened...



## Avoiding Restrictive Specifications

- \* • "Professional Procurement" personnel need to be able to spot restrictive specifications...

- **Public policy considerations** of using restrictive specifications
  - Competitor complaints of unfair procurement practices
  - Integrity of procurement professionals may be questioned
  - Damage to competition as vendors step away from State contracts
  - Perception that precious tax dollars aren't spent responsibly
  - Loss of motivation on contractor's part to complete projects
  - Project "scope creep"

done in 2 yrs. no motivation if the vendor thinks they have everything locked in.

make them think they have someone ready to step in if they default

restrictive

-green-tractor

-400 to +400  
in AC office

## Contract Administration

Contract Administration is assisted by having:

- Competitively bid contracts with deliverables-based or performance-based specifications
- Well-structured deliverables acceptance and payment plans

## OKP Examples

- Company MCH offers a unique product and restricts distribution to exclusive territories. Extensive agency research which confirms the exclusive distribution is included in PA Request documentation.
- Agency wishes to contract with an advertising firm to create an ad campaign. - This is not a sole source
- Agency wishes to contract with an advertising firm to work with media outlets (TV, Radio, Print) to place public service announcements created by a national organization. - This is not a sole source.
- Agency wishes to contract directly with a specific media outlet due to the target audience for placement of existing advertising content - this may be a non-competitive transaction - subject to review by Procurement, based upon research and documentation provided by agency.

(MTV  
for  
example)

## PEP - Purchased for Evaluation Purposes

**Policy:** For the purchase of product(s) that might be consumed during an evaluation process

- Previously mentioned Research Standards and Expectations apply here...
- Are you developing a Qualified Products List for future bids?
  - Consider all interested contractors/ manufacturers / service providers so that competition isn't restricted when eventual bid is released.

### Examples

- Reflective sheeting for traffic signs

*consumed by testing it*

*usually big amount*

### ***PSC - Patented or Copyrighted Materials or Services***

- This PA-Type will be removed from SMART as an option effective December 1, 2012.
- Please use other PA-Types, including
  - OKP

### ***PSP - Professional Services Sunshine Act***

- KSA 75-37,130 et seq; limited to CPAs, Attorneys, Consultants
- A consulting service is a mental exercise that may result in verbal advice or a written opinion
- Statutes do not include competitive bid exceptions for "incumbent", "preferred" or "familiar" vendors
- Use a deliverables-based specification for bidding and contracting
- Best Practice: Formally bid Professional Services regardless of dollar amount

*25,000.00 LDA*  
*accountants- lawyers- consultants*  
*State Hospital*



### ***PSP - Professional Services Sunshine Act***

- **\$0 to \$5,000**
  - Agencies may enter into their own contracts
  - No competition required, but is recommended
  - No Prior Authorization required when the contract is for \$5,000 or less
  - No Quarterly Reporting requirements
- Agencies cannot amend or increase the amount of the contract over \$5,000 meeting statutory expectations for the new dollar amount

### ***PSP - Professional Services Sunshine Act***

- **\$5000.01 to \$25,000**
  - Use a written, deliverables-based scope of work
  - Bidder responds with proposed approach and price
- Genuine Sole Source?
  - Use PA Form and SMART for statutorily-required reporting
  - Agency must specify in the PA document whether the transaction is
    - • The result of negotiations; or
    - • Is considered by the agency to be a sole source.
- Any attempt to modify the contract to exceed \$25,000 must be submitted to Central Procurement, will be met with a critical eye, and may be subjected to a formal bid process.



## ***PSP - Professional Services Sunshine Act***

- **\$25,000.01 and over**

- Any attempt to modify the contract to exceed \$25,000 must be submitted to Central Procurement, will be met with a critical eye, and may be subjected to a formal bid process.
- Sole source?
- Agency submits PA Form to Central Procurement.
- Research must be complete and thorough.

- Contingency fee contracts  
contact P.C.

## ***SCW - State Use Catalog Waiver***

- KSA 75-3322(a) Whenever the qualified vendors are unable to supply the products or services needed or are unable to meet delivery requirements...a written waiver [request] shall immediately be forwarded to the director of purchases by the state agency procurement officer...  
*price issue contact P.C.*
- Requests for SCW on the basis of price will be denied
- Because of SMART Processing, State Use Waivers under \$5,000 will not be routed to Central Procurement
- \* Repeated local approvals of SCW requisitions may result in:
  - Loss of Local Delegated Authority
  - Restrictions of use of procurement cards
  - Ordering restrictions, including ad hoc routing requirements
- \* Audits of SMART Reports, P-Card Transactions and feedback from State Use Catalog vendors will be used to determine if this abuse is occurring



## STX - Statutorily Exempt

- KSA 75-3739(a) states that "...purchases of and contracts for supplies, materials, equipment and contractual services ...shall be based on competitive bids..."
- Legislative exemptions
  - Statutory language must state a specific exemption *75. ....*
  - Budget provisos
- "Enabling Statutes" where specific exemption is NOT mentioned  
*May enter into Contracts*
- CAUTION: a statutory exemption from Central Procurement may not exempt the procurement from a formal bid process or from conducting the procurement in a fair and transparent manner.

*exempt from Purchasing Requirement*

## *Cars - Budget Approval*

### USE - Purchase of Used Equipment

KSA 75-3739(a)(6) when a used item becomes available and is subject to immediate sale;

- Consider long-term implications
  - Will the agency need supplies or maintenance, and how will they be purchased?
- Include research, including information cost of NEW equipment
- Example: Company manufactures a steam autoclave / sterilizer for laboratory use
  - Equipment had been installed for another customer
  - Equipment is refurbished, but cannot be sold as "new"
  - Warranty on the equipment as if it were sold as "new and unused"

## \* \* USR - Consumable Utilities

- USR does not apply to construction or related services

### \* \* Utilities covered include:

- Electricity
- Municipal water service / Rural Water Districts (water only - no other services)
- Municipal sewer / sewage / water run-off

### \* \* Services NOT covered and subject to competitive bid processes or other PA Requests

- Cable / Satellite Television and similar Telecommunications Services
- Cellular Phone / Data Devices and similar Telecommunications Services *- on contract*
- Trash / Refuse / Recycling Services
- Natural Gas (for most locations, a natural gas contract is available) *on contract*
- General Postal / Overnight Shipping Services *on contract*
- Services related to maintaining typical building infrastructure related to utilities

- Engage Central Procurement in any discussion which might conflict with these parameters

*T1. Biddable*

## Questions?

- \* • Completed tests are due seven (7) calendar days after training.

- Chris Howe, Director, CPPO, CPPB
- State of Kansas - Procurement and Contracts
- Telephone: 785-296-2374
- Email Address: [chris.howe@da.ks.gov](mailto:chris.howe@da.ks.gov)
- Check out our website: <http://da.ks.gov/purch/>